



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/15/97	09/15/95	BORHOUSE	S 00134/114

FOLEY AND LARDNER
777 EAST WISCONSIN AVENUE
MILWAUKEE WI 53202

33M1/0407

EXAMINER	
WINAKOR, E	
ART UNIT	PAPER NUMBER
3311	

DATE MAILED: 04/07/97

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action SummaryApplication No.
08/529,044Applicant(s)
Eckhouse et al.Examiner
Eric F. WinakurGroup Art Unit
3311☐ Responsive to communication(s) filed on _____☐ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims☒ Claim(s) 1-47 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.☒ Claim(s) 1-47 is/are rejected.☐ Claim(s) _____ is/are objected to.☐ Claims _____ are subject to restriction or election requirement.**Application Papers**☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.☐ The drawing(s) filed on _____ is/are objected to by the Examiner.☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.☐ The specification is objected to by the Examiner.☐ The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119**☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.☐ received in Application No. (Series Code/Serial Number) _____☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)**☒ Notice of References Cited, PTO-892☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4, 5☐ Interview Summary, PTO-413☐ Notice of Draftsperson's Patent Drawing Review, PTO-948☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3311

1. The information disclosure statement filed February 1, 1996 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.
2. Claims 1 - 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 1, the step of "applying pulsed light" does not indicate to what or where the light is to be applied; it is unclear from the recitation of "heating collagen and shrinking the collagen" if the heating and shrinking are separate steps or if they are merely results of applying the light; the recitation beginning "thereby reviving" and continuing to the end of the claim appears to define the result of the previously recited steps and therefore is not considered to be patentably limiting. With regard to claim 5, ice would be considered a translucent substance, not a "transparent substance" as is recited in the base claim. With regard to claim 8, it is unclear how the temperature of ice can be reduced as is recited in the base claim. With regard to claims 12 and 32, the term "Nd(Yag)" should read "Nd:YAG". With respect to claim 20, the claim appears to be incomplete since none of the claimed steps limit the method to generating a temperature distribution as set forth in the preamble. With regard to claim 21, it appears that the comma in line 4 should be deleted. With regard to claim 25, it is unclear whether the phrase following the recitation of "capable of" is meant to be patentably limiting. With regard to claim 26, the term "passes" should read "passed". With

Art Unit: 3311

regard to claims 27 and 28, the phrase "the delay time" lacks antecedent basis. With regard to claim 29, the phrase "the cooling means" lacks antecedent basis. With regard to claim 39, the claim appears to be incomplete, since none of the claimed steps relate to cutaneous resurfacing. With regard to claims 43 and 47, the claims appear to be incomplete, since none of the claimed elements relate to cutaneous resurfacing.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 14 - 16, and 18 - 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ghaffari.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 10 - 14, 17, 25, 30 - 34, and 37 - 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg. Freiberg teaches a multiwavelength medical laser device that includes a visible source producing an aiming beam and several laser sources including Nd:YAG and Er:YAG sources, wherein light is delivered through a light guide. Although Freiberg does not particularly

Art Unit: 3311

mention heating and shrinking collagen, it will be held that one of ordinary skill in the art at the time of the invention would recognize that operation of the device of Freiberg will heat and shrink collagen, and therefore the device is "capable of heating collagen and shrinking the collagen" as set forth in the claim. While Freiberg does not teach the specific ranges set forth in the claims, he does teach that the energy per pulse and repetition rate are controllable (see column 6). It would have been obvious to one of ordinary skill in the art at the time of the invention to operate the device of Freiberg within the ranges set forth in the claims since Freiberg teaches that the output parameters of the device are controllable. While Freiberg does not specifically teach that ruby lasers are used with the system, he does teach that a variety of lasers can be used with the system including lasers generating visible wavelength ranges. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a ruby laser in the device of Freiberg, since Freiberg teaches that a variety of lasers can be used with the system including lasers generating visible wavelength ranges.

7. Claims 3 - 9, 21 - 24, 26 - 29, 35, and 36 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rüttger-Pelli teach an apparatus for treatment of the skin, wherein the treatment includes applying light rays to the skin. Hennings et al. teach a method and apparatus for tympanic membrane shrinkage that utilizes a laser to heat and shrink collagen.

Art Unit: 3311

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Winakur whose telephone number is (703) 308 - 3940. The examiner can normally be reached on Monday - Thursday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer Bahr, can be reached on (703) 308- 1066. The fax phone number for this Group is (703) 308 - 3139.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308 - 0858.

Eric F. Winakur
March 28, 1997



JENNIFER BAHR
PRIMARY EXAMINER
GROUP 3300